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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Commission
Washington DC 20554

In the Matter of:

Federal-State Joint Board on

Universal Service

Eleventh Order on Reconsideration
and Further Notice of Proposed Rulemaking

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CC Docket 96-45

Comments from the Council of Chief State Officers

In its Eleventh Order on Reconsideration ("Order"), the Federal Communications Commission reiterates the requirement that the Administrator of the Universal Service Administrative Company ("USAC") must take all reasonable and appropriate steps to ensure that USAC can fully fund all eligible appeals for funding. The Order suggests a need to establish additional funding priority rules in the event that sufficient funds are not available to cover all of the appeals during a particular funding cycle.

The Council of Chief State School Officers (CCSSO) respectfully submits comments to this Order on behalf of the public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education Activity, and five extra-state jurisdictions. Over the past two years, CCSSO has devoted considerable time and staff resources to assist the Commission and USAC in making decisions and in crafting rules that complement and reinforce the enormous efforts state and local school and library officials have themselves given to ensure the success of the universal service discount program. While our comments henceforth are directed primarily to Section V of this Order, they actually reflect an expansion and enhancement of earlier filings that urge the Commission to move forward on implementing the goals to achieve universal and equitable services for all Americans while building on established state and local education policies and telecommunications procurement practices.

Section V of this Order requests comment on a proposal that requires the Administrator to allocate the available funds for "priority one" or telecommunications and Internet access services on a pro rata basis, irrespective of the discount level associated with the request. In addition, the Order requests comment on whether it would be appropriate for the Commission to allow the Administrator to use funds collected in the next funding year to fund priority one service appeals for the prior year. Finally, the Order seeks comment on a proposal that would provide school and library applicants a full six-months, beginning on the date when an appellant receives a funding notification, to complete the installation of discounted internal connection services.

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In response to the requests for comment to this Order, and to forthcoming decisions that may affect the support mechanisms for maintaining discounted services for all of the nation's schools and libraries, the Council urges the Commission to recognize the expectations and needs of the ultimate consumers of these services. The Commission has an obligation to fulfill the original intent of the Congress in assuring that all areas of the nation, urban and rural isolated areas, must have access to telecommunications and information services. Full support for telecommunications discounts for schools and libraries represents an important and initial step to make sure that all areas of the nation have equal access to advanced telecommunications services - and critical services that support education.

It is very important to note that the fundamental concept of this program is to provide *universal services*. The intent of Congress and subsequent recommendations by the Federal-State Joint Board on Universal Service indicate the goal of the program is to provide all eligible schools and libraries with assistance to subsidize the services included in their applications. In the first year of the program, applicants had to reconcile and readjust their plans and commitments in response to a reduced funding cap and succeeding set of funding priorities. Moreover, in many instances state and local bidding processes had to be modified and adjusted in order to comply with a limited application filing period. Establishing a process for restoring awards related to appeals must not further constrain the implementation of the program or exacerbate problems created by the funding caps. The process should set the direction for the future, as well as remedy the past problems.

The Council believes the entire program should be considered as one which is on a rolling basis for supporting applications, awards and allowable appeals. Therefore, we do not see the need to constrain funding by the level of funds allocated to a "reserve fund for appeals" or to pro-rate funding appeals based on available funds. Nor do we believe the Administrator should be required to complete the review and merit of all funding appeals before ruling on and processing of individual successful appeals. Acceptances of our recommendations suggest the Commission should also consider advancing the release of the Order governing the amount of money to be collected for subsequent years. With respect to the Eleventh Order on Reconsideration, we believe the recommendation cited below would help greatly in facilitating the flow of work and decisions by the Administrator, especially, if applications could be submitted at any time and processed throughout the year, rather than having applicants comply with the constraints of an application window.

Comments on Order:

Section V, Paragraph 9

Consistent with the present and established rules of priority, the Council agrees with the proposed plan to first fund all priority one service appeals that have been granted and to

proceed to fund internal connections appeals at each descending single percentage - whether or not sufficient funds have been set aside or "reserved." While the Council recognizes a need for a forward-looking decision that would anticipate the establishment of rules to guide the allocation of funding appeals, the Council believes the process must be consistent with the rules of priority which guided funding commitment decisions by the Administrator during the regular application and review period.

The Council concurs with the tentative decision that none of the applicants involved in an appeal settlement should receive support for internal connections at a discount level that would be lower than that which guided the original allocation of funds and a discount cut off point. We believe that all school and library appellants should receive discounts no less than the level they would have received under the rules of eligibility for the initial review and processing period. If for example, an appellant school district met the requirements and filed within the application window and qualified for an eighty-percent discount for internal connections, it should receive no less than that level of support.

Paragraph 10

The initial proposal in Paragraph 10 would require the allocation for appeals to priority one services and on a pro-rata basis irrespective of the discount level associated with the request. This proposal presumes that the only funds available for supporting appeals from one program year are the funds collected during that year. Moreover, the Administrator would be obligated to wait until all priority one appeals have been processed before allocating funds on a pro rata basis. A reserve fund for anticipated appeal awards based on the experience of year-one and subsequent years may be necessary. However, the Council does not accept the concept that a pre-estimated appeal fund reserve should influence the level of support level for an otherwise eligible applicant. Therefore, we do not see the need for additional funding priority rules for the allocation of funds for the appeal phase of the operation.

The Council believes that if an applicant succeeds in its appeal, it should be treated as all other eligible applicants and funded under the normal rules of priority. There would be no reason to penalize an applicant that met the criteria for funding and the application filing deadline for reasonable mistakes by the applicant or by the reviewer. The use of a new pro-rata funding formula that disregards the discount level associated with the request seems unfair and unnecessary. By adopting such a provision, the Commission would actually be punishing applicants who would have been entitled to the full amount under priority one if the award had been made during the regular program year.

Basically, the Council feels the imposition of additional funding priority rules will contribute to the diminution of the fundamental principles that are intrinsic to the very purpose and intent of Section 254(h) of the Telecommunications Act of 1996. It is very important to note that the basic concept of the universal services discount program is that it

provides *universal services*. Namely, all applicants are to be provided assistance to subsidize the services included in their applications. Although the program is having to operate within a funding cap and applicants have had to accommodate their regular competitive bidding process to the application filing window in the first year, that is not necessarily going to be the case, we hope, for future years. The entire program should be considered as one which is on a rolling basis for applications and awards. This would also help greatly in smoothing out the work flow for the administration of the program if applications could be made at any time and processed through the year, rather than having to be completed in limited period. In any event, the Council recognizes the process must continue to incorporate a priority ingredient to assure that schools and libraries with the greatest need receive adequate support.

The presumption of the universal services discount has to be that with some appeals, which could extend into the succeeding year, there would be funds available in the succeeding year to cover those appeals. Over time, all of this evens out with the expectation that the total number of appeals and carry-over funding requirements from one year to the next would remain approximately the same. Therefore, subsequent annual estimates for discount service demand should take into account the total amount of funds that would be needed to cover all eligible applications.

Paragraph 11

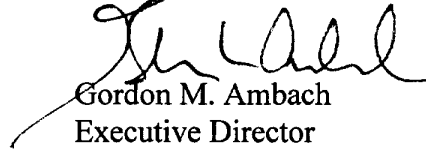
In Paragraph 11, the Council concurs in part with the tentative decision to allow applicants six months from the date of appeal decisions to complete internal connections. The Council recognizes that school and library applicants must complete installation of internal connections by a certain date for each funding year. However, the Council is aware of applicants that have needed six months and longer to complete the installation of certain telecommunications and Internet access services. The Council, therefore, urges the Commission to provide applicants an additional six months from the final decision on appeal to complete the installation of all eligible services, including telecommunications services and Internet access.

Conclusion:

The Council recommends that the criteria for considering approval and support for appeals to the Universal Service Administrative Company and to the Commission should be based solely on the rules of funding priority that apply to all filed applications. Errors made by an applicant or by individuals processing applications should not influence the level of support to otherwise eligible applications for universal service discounts. All eligible applicants for universal service discounts should be funded under a single set of rules for funding rules and priorities. If necessary, funding for all eligible and successful appeals should be drawn down from succeeding year collections.

The Council would like to take this opportunity to congratulate the Chairman and the Commissioners who continue to demonstrate a commitment to achieve the goals of universal service. Expanding the universal service provisions to include all of the nation's schools and libraries has already had an enormous impact on state and local plans to extend and improve the delivery of educational services to all Americans.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Ambach", is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gordon M. Ambach
Executive Director